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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,699	02/03/2004	David Bent	101124.0001US1	3802

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MACPHERSON KWOK CHEN & HEID LLP
1762 TECHNOLOGY DRIVE, SUITE 226
SAN JOSE, CA 95110

EXAMINER
DANG, HUNG XUAN

ART UNIT	PAPER NUMBER
2873	

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

Office Action Summary	Application No.	Applicant(s)	
	10/771,699	BENT, DAVID	
	Examiner	Art Unit	
	Hung X. Dang	2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 July 2004*.

2a)☒ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16 and 18* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16 and 18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

The amendment filed on 11/29/04 has been entered.

Claims Rejection Under 35 USC - 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 5-7, 9, 11-13, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Wright et al** (6,533,413) in view of **McDaniel** (6,478,419).

Wright et al discloses neck leash retaining device for eye wear which comprises a frame 12, a pair of lenses formed on the frame, a strap 4 is made of neoprene and formed on the frame and configured to inhibit the glasses from falling off of a wearer a leash (between beads 6 and 8) formed to the strap 4 and a collar formed to the leash (see figures 1 and 4 and the related disclosure.)

It should be noted that although claim 18 is "method claims", the method steps consist of the broad steps of "forming" therefore these steps would be inherently satisfied by the apparatus of the reference as modified.

Wright et al does not disclose the collar is buoyant material.

McDaniel, however, discloses the collar 10 is buoyant material.

Because Wright et al and McDaniel are both from the same field of endeavor, the purpose of providing buoyancy to the eyeglass to help prevent loss thereof when loose

or free in the water as disclosed by McDaniel would have been recognized as an art pertinent art of Wright et al.

It would have been obvious, therefore, at the time the invention was made to a person having skill in the art to construct the eyeglasses frame, such as the one disclosed by Wright et al, with collar is buoyant material, such as disclosed by McDaniel for the purpose of providing buoyancy to the eyeglass to help prevent loss thereof when loose or free in the water.

Claims Rejection Under 35 USC - 103

3. Claims 1, 6, 9-13 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lundbeck** (4,978,210) in view of **McDaniel** (6,478,419)

Lundbeck discloses retainer for eyewear which comprises a frame 12, a pair of lenses formed on the frame, a strap 16 formed on the frame and configured to inhibit the glasses from falling off of a wearer a leash 20 formed to the strap 16 and a collar 24 formed to the leash 20 (see figure 1 and the related disclosure.)

It should be noted that although claim 18 is "method claims", the method steps consist of the broad steps of "forming" therefore these steps would be inherently satisfied by the apparatus of the reference as modified.

Lundbeck does not disclose the collar is buoyant material.

McDaniel, however, discloses the collar 10 is buoyant material.

Because Lundbeck and McDaniel are both from the same field of endeavor, the purpose of providing buoyancy to the eyeglass to help prevent loss thereof when loose

or free in the water as disclosed by Lundbeck would have been recognized as an art pertinent art of Lundbeck.

It would have been obvious, therefore, at the time the invention was made to a person having skill in the art to construct the eyeglasses frame, such as the one disclosed by Lundbeck, with collar is buoyant material, such as disclosed by McDaniel for the purpose of providing buoyancy to the eyeglass to help prevent loss thereof when loose or free in the water.

Claims Rejection Under 35 USC - 103

4. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Wright et al** (6,533,413) in view of **McDaniel** (6,478,419) as applied to claims 1, 5-7, 9, 11-13, 16 and 18 above, and further in view of **Pierotti** (6,343,860).

Wright et al and McDaniel disclose all the limitation of the claimed invention as stated above.

Wright et aland McDaniel do not disclose that the frame made of rubber.

Pierotti, however, discloses that the frame 60 made of soft rubber (see column 5, lines 5-10.)

Because Wright et al, McDaniel and Pierotti are all from the same field of endeavor, the purpose of providing comfortable for the wearer at the point where the frame contacts a wearer's face as disclosed by Pierotti would have been recognized as an art pertinent art of Wright et aland McDaniel.

It would have been obvious, therefore, at the time the invention was made to a person having skill in the art to construct the eyeglasses frame, such as the one disclosed by Wright et al and McDaniel, with the frame made of soft rubber, such as disclosed by Pierotti for the purpose of providing comfortable for the wearer at the point where the frame contacts a wearer's face.

Claim Rejections Under 35 USC - 103

5. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Lundbeck** (4,978,210) in view of **McDaniel** (6,478,419) as applied to claims 1, 6, 9-13 and 18 above, and further in view of **Pierotti** (6,343,860).

Lundbeck and McDaniel disclose all the limitation of the claimed invention as stated above.

Lundbeck and McDaniel do not disclose that the frame made of rubber.

Pierotti, however, discloses that the frame 60 made of soft rubber (see column 5, lines 5-10.)

Because Lundbeck, McDaniel and Pierotti are all from the same field of endeavor, the purpose of providing comfortable for the wearer at the point where the frame contacts a wearer's face as disclosed by Pierotti would have been recognized as an art pertinent art of Lundbeck and McDaniel.

It would have been obvious, therefore, at the time the invention was made to a person having skill in the art to construct the eyeglasses frame, such as the one disclosed by Lundbeck and McDaniel, with the frame made of soft rubber, such as

disclosed by Pierotti for the purpose of providing comfortable for the wearer at the point where the frame contacts a wearer's face.

6. Applicant's arguments with respect to claims 1-7, 9-13, 16 and 18 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication should be directed to Examiner Dang at telephone number (571) 272-2326.

8/04

Hung Xuan Dang
Primary Examiner